LE COPY.

Office Supreme Court U.S.
FILED
JAN 16 1903
JAMES H. McKENNEY
WATERTOWN, N.Y.

Supreme Court of the United States.

~~No. 414. October Term, 1901.~~

The National Bank & Loan Company of Watertown, New York,
Plaintiff in Error,
vs.
Moses Petrie.

In error to the Supreme Court of the State of New York.

16

STATEMENT.

The plaintiff in error, the defendant below, is a National Bank, organized under the National Banking Act, doing business at the city of Watertown, N. Y. Mr. George H. Sherman was president of the defendant bank at the time of the alleged transaction. Mr. Sherman died in February, 1897, before the trial of this action. In 1893 the defendant in error left with Mr. Sherman at the bank $500 which he desired to invest for a few years. Such money was placed to the plaintiff's credit in the bank. Subsequently Petrie, the plaintiff below, purchased of the bank a bond of the Westchester County Water Works Co. for $500 and gave his check on the bank in payment for the same, dated July 1st, 1893. The plaintiff received

the interest on the same up to and including January, 1896, as the coupons became due. On or about the 9th day of July, 1898 (a year or more after the death of Mr. George H. Sherman), this action was commenced alleging fraud and misrepresentation by the defendant bank, as to the value of the bond so sold and delivered to the plaintiff in that it was a first-class security, just as good as gold and all right (p. 10). That the defendant in selling the said bond to the plaintiff was not acting within the scope of its authority under the National Banking Act and the laws of the United States, but was acting in violation of the laws and unlawfully had purchased the said bond for the purpose of speculation (p. 11). That plaintiff had tendered the defendant the said bond and demanded the face value of the same, which tender was refused. That said bond was of little or no value and the plaintiff had been damaged by reason in the sum of $500 and interest from 1st of January, 1896. The allegations contained in the complaint were denied by the answer; except the allegation therein that the defendant in selling said bond to the plaintiff was not acting within the scope of its authority under the National Banking Act and the laws of the United States, but was acting in violation of these laws and unlawfully and had purchased the said bond with others for the purpose of speculation; which was not denied and therefore was an admitted fact by the record. As a third defense, the defendant alleged that it was a national bank organized under the laws of the United States, that it is prohibited from dealing in

the kind of bonds or securities mentioned in the complaint; that the sale of the bond was without authority or consent of the defendant, not in the regular course of business, was wholly unauthorized, and was and is void (p. 14).

The issue so joined was brought to trial at a trial term of the Supreme Court of the State of New York, before a justice thereof and jury. At the trial, at the close of the plaintiff's evidence and also at the close of the evidence in the case before the submission to the jury, the defendant moved that the plaintiff be non-suited, among other grounds, that the transaction in question, to wit, the purchase and sale of the bond in question being prohibited by the National Banking Law, the defendant had no right or authority to purchase the bond and sell it to plaintiff, and therefore, so far as the defendant is concerned, the transaction having been conducted by Mr. Sherman, its president, he was not acting for it, the bank, and such transaction was absolutely void. The motion was denied and the defendant excepted. The jury rendered a verdict for the plaintiff for the par value of said bond and interest, on which judgment was entered. From the judgment so rendered, the defendant appealed to the Appellate Division of the Supreme Court, where such judgment was affirmed. From the judgment entered therein, an appeal was taken to the Court of Appeals, where the said judgment was affirmed.

ERRORS ASSIGNED.

The Defendant in Error, the plaintiff below, in

his complaint alleges, that the Plaintiff in Error, the defendant below, in selling the bond to the plaintiff, was not acting within the scope of its authority under the National Banking Act or the laws of the United States, but was acting in violation of these laws and unlawfully had purchased the said bond and others some time previous to the sale thereof to the plaintiff for the purpose of speculation, which allegation was admitted by the defendant, by not being denied, and thus the fact was established that the bond was bought for speculative purposes, and that such purchase and sale was unlawful. The defendant sets up in its answer a third defense to the action, that the defendant at the several times mentioned in the complaint was and still is a national banking association, duly organized under and by virtue of act of the Congress of the United States, entitled "An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved January 3, 1864; that under the statute of the United States, under and by virtue of which said corporation was organized, and was and is carrying on business, it was prohibited from dealing in the kind of bonds or securities mentioned in the complaint and the sale of said bond mentioned in the complaint to the plaintiff, was without the authority or consent of the defendant, and was not within the course of its regular business, was wholly unauthorized and was and is void (page 14).

At the close of the evidence on the part of the plaintiff the defendant moved that the plaintiff be nonsuited on the ground among others that the defendant being a national bank, was not bound by the action of Mr. Sherman, its president, in the purchase or sale of the bond in question, as the transaction is prohibited by the National Banking Act. That the purchase and sale of the bond in question being prohibited by the national banking law, the defendant had no right or authority to purchase the bond and sell it to the plaintiff, and therefore so far as the defendant is concerned, the transaction having been conducted by Mr. Sherman, its president, he was not acting for it, the bank, and such transaction was absolutely void. Again at the close of the evidence and before submission to the jury, the same motion was renewed, which motions were severally denied and the defendant duly excepted (pp. 36-59.)

Such refusal to nonsuit is the error asserted and intended to be urged. This error was urged in the Appellate Division of the Supreme Court and in the Court of Appeals of the State of New York, and by each of the courts was overruled and decided against the defendant.

POINTS OF LAW.

I.

The Plaintiff in Error, the defendant bank, in the court below was not liable for the acts of its officers in selling the bond in question to the Defendant in Error, the plaintiff in the court below,

as the buying and selling of bonds such as the one sold to the plaintiff was not within the scope of its corporate powers.

By the complaint and answer in this action, it is an established fact that in selling the bond to the plaintiff, the defendant was not acting within the scope of its authority under the National Banking Act and the laws of the United States, under which it was organized, but was acting in violation of those laws and unlawfully (p. 11), having purchased the said bond for purposes of speculation.

Such banking association, after organization, was authorized "To exercise by its Board of Directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange coin and bullion; by loaning money on personal security and by obtaining, issuing and circulating notes according to the provisions of this title."

Revised Statutes of the United States, § 5136, Sub. 7.

This statute has been construed by this Court as being an implied prohibition of the banking associations organized under the statute from dealing in stocks and bonds.

First Nat. Bank vs. Nat. Exchg. Bank, 92 U. S., 122-128.

Logan County Nat. Bank vs. Townsend, 139 U. S., 67-73.

California Bank vs. Kennedy, 167 U. S., 362-367.

Concord First National Bank vs. Hawkins, 174 U. S., 264-270.

Central Transportation Co. vs. Pullman Car Co., 139 U. S., 24.

The same doctrine is held in

McCormick vs. Market Bank, 165 U. S., 538-550.

II.

As the sale of the bond to the Defendant in Error was such a transaction as the Plaintiff in Error, the bank, had no authority to engage in, the bank is not responsible for the misrepresentations of its president at the time of the sale.

Weckler vs. The First National Bank of Hagerstown, 42 Maryland, 561.

(s. c.) 20 Amer. Rep., 95, 1 Thompson's National Bank cases, 533.

Which was case brought to recover from the bank on the alleged misrepresentations of the teller thereof on a sale of Northern Pacific railroad

bonds, which the bank was selling on commission. The purchase was made in October, 1871; the plaintiff collected the coupons due up to July, 1873, when default was made in the payment of the interest coupons. The Court says, on page 104 of the American Reports: "We are therefore clearly of the opinion that the business of selling bonds on commission is not within the scope of the powers of the corporation and the bank could not under any circumstances carry it on and being beyond the corporate powers the defense of the ultra vires is open to the appellant. And it follows from this that the bank is not responsible for any false representations made by its teller to the appellant by which she was induced to buy the bond in question."

So in the case at bar, it being a fact established by the pleadings that the bank in buying and selling the bond in question was engaged in a speculation and that such purchase and sale was illegal the defendant bank is not liable for any misrepresentation made by its president.

A similar decision was made by the Supreme Court of Pennsylvania. The president of the defendant bank received from the plaintiff $1,000 to be invested in the bonds of the city of Allentown. The plaintiff, not having received all of the bonds or a return of the residue of the money, brought suit against the bank. The Court held that the specified powers given by the statute nor the incidental powers necessary to carry on the business of banking do not extend to the dealing in bonds

and consequently that the bank was not responsible.

First National Bank of Allentown vs. Hoch, 89 Penn. St., 324.

(s. c.) 2 Thompson's Nat. Bank Cases, 375.

III.

The Defendant in Error knew at the time of the purchase of the bond from the Plaintiff in Error that the bank was engaged in a business which it had no authority to transact and in buying the bond of the bank he was acting at his own peril that it would turn out all right.

The Defendant in error alleges in the complaint that he bought the bond of the bank; that in selling the bond it was not acting within the scope of its authority but in violation of law (p. 11).

The Defendant in Error in dealing with the bank is presumed to know the powers of the bank and its officers and that such a transaction as the purchase and sale of bonds was not within the power of the bank.

Western Nat. Bank vs. Armstrong, 152 U. S., 346-352.

IV.

As the Defendant in Error and the Plaintiff in Error were equally objects of legal censure in engaging in the transaction of the sale and purchase of the bond, they will be left where they have placed themselves.

> Nat. Bank of Xenia vs. Stewart, 107 U. S., 676-678.

The Defendant in Error alleges in his complaint that the transaction was illegal as not within the scope of the powers of the Plaintiff in Error and is therefore chargeable with actual knowledge of the illegality of the transaction. Besides, the presumption of law is that the Defendant in Error knew that in selling him the bond the bank and its officers were acting beyond the scope of the powers of the bank and that the transaction was illegal.

> Western Nat. Bank vs. Armstrong, 152 U. S., 346-352.

V.

The contract of sale being illegal as being ultra vires, and having been fully executed by both parties, neither party can claim anything under it and they will be left as the Court finds them.

Thomas vs. Railroad Co., 101 U. S., 71.

Pearce vs. Madison & I. R. R. Co., and Peoria R. R. Co., 21 How., 441.

The United States alone can question the validity of the transaction between the plaintiff and defendant.

Thompson vs. St. Nicholas Bank, 146 U. S., 240.

VI.

This court has jurisdiction to entertain this writ of error.

Logan Co. Nat. Bank vs. Townsend, 139 U. S., 67-72.

McCormick vs. Market Bank, 165 U. S., 538-546.

The Plaintiff in Error claimed an immunity under a statute of the United States and the decision was against such immunity.

The Logan County National Bank vs. Townsend, cited above, was almost similar to the case at bar and is conclusive on the question of

jurisdiction of this court to review the judgment of the New York court.

VII.

In this case the Defendant in Error was parti ceps in a transaction which he knew was illegal and contrary to the provisions of the statute of the United States, claims that he had suffered damage in the transaction and seeks to recover and has recovered in the courts below for such damage.

VIII.

The judgment should be reversed.

HENRY PURCELL and

JOHN LANSING,

Counsel for Plaintiff in Error.